

1 AGREEMENT BETWEEN

2 THE TOWN OF AMHERST

3 AND

4 AMHERST COMMUNITY TELEVISION, INC.

5 October 20, 2017

6
7 Section 1: DEFINITIONS

8 For the purpose of this Agreement, the following words, terms, phrases, and their derivations
9 shall have the meanings given herein, unless the context clearly requires a different
10 meaning. When not inconsistent with the context, the masculine pronoun includes the
11 feminine pronoun, words used in the present tense include the future tense, words in the
12 plural number include the singular number, and words in the singular number include the
13 plural number. The word "shall" is always mandatory and not merely directory, except
14 where noted. Where the following definitions conflict with definitions in law, it is
15 the express intent that the definition in Federal law shall take precedence.

16 (a) ACTV: Amherst Community Television, Inc., doing business as Amherst Media, a non-profit,
17 tax exempt charitable corporation organized pursuant to Massachusetts General Laws c. 180.

18 (b) Cablecast: A telecast by cable television.

19 (c) Cable Service: The one-way transmission to Subscribers of video or other programming
20 services, together with Subscriber interaction, if any, which is required for the selection
21 or use of such video programming or other programming service.

22 (d) Cable Television System or Cable System: A facility consisting of a set of closed
23 transmission paths and associated Signal generation, reception and control equipment de-
24 signed to provide Cable Service (including video programming) to multiple Subscribers
25 within a community unless such system does not use any public rights of way.

26 (e) Channel or Video Channel: A portion of the electromagnetic frequency spectrum
27 which is used in a Cable System and which is capable of delivering a television channel.

28 With respect to PEG Channel and Institutional Network (I-Net) requirements,
29 the definition of channel shall also mean the channel(s) assigned for PEG or I-Net use,

1 currently a minimum allocation of 6 MHz of bandwidth.

2 (f) Communications Network: A communication network which is constructed and
3 operated by the Contracting Authority as a replacement to the Institutional Network
4 and which is generally available to only the municipal and Public School buildings and
5 which is available for the ACTV's digital video transmissions.

6 (g) Contracting Authority: The Town Manager.

7 (h) DTC: The Massachusetts Department of Telecommunications and Cable (Office of
8 Consumer Affairs and Business Regulations).

9 (i) Educational Access Channel or Educational Channel: Any channel, or portion thereof,
10 which has been allocated for use by the Public Schools or their designee(s).

11 (j) Effective Date: The date of execution of this Agreement.

12 (k) FCC: The Federal Communications Commission or any successor agency.

13 (l) Government Access Channel or Government Channel: Any channel, or portion
14 thereof, which has been allocated for use by the Issuing Authority or its designee(s).

15 (m) Institutional Network (also referred to as "I-Net"): A communication network using fiber-
16 optics or a replacement technology for fiber-optics which is constructed and operated by the
17 cable operator and which is generally available only to municipal and Public School buildings and
18 Subscribers who are not residential Subscribers and which is available for ACTV upstream video
19 transmissions.

20 (n) Issuing Authority: The Town of Amherst Select Board, in its statutory capacity as cable
21 licensing authority pursuant to Mass. General Laws c. 166A, s.1.

22 (o) Licensee: The cable operator holding the currently – effective cable television renewal
23 license issued by the Town of Amherst. In the event that the Town issues additional licenses to
24 other cable operators during the term of this Agreement, "Licensee" shall refer to and include
25 all such operators.

26 (p) PEG: The acronym for Public, Educational, and Governmental.

27 (q) PEG Access Channels: Any Channel(s) made available for the presentation of PEG
28 programming.

29 (r) Programming or Video Programming: Programming provided by, or generally considered

comparable to programming provided by, a television broadcast station.

(s) Public Access: The process by which people can communicate their activities, opinions and ideas without interference or censorship through the creation of cable television programming and other means, including educational and training activity available to the general public in furtherance thereof.

(t) Public Access Channel(s): Any channel, or portion thereof, which has been allocated for Public Access.

(u) Public Schools or Schools: The Amherst-Pelham Regional School District and the Amherst Public Schools.

(v) Renewal License: The non-exclusive Cable Television License granted to Comcast of Massachusetts/Virginia, Inc. by an instrument effective October 16, 2016.

(w) Subscriber: Any person, firm, corporation or other entity who or which elects to subscribe to for any purpose, to a Cable Service provided by the Licensee by means of, or in connection with, the Cable Television System.

(x) Town: The Town of Amherst, Massachusetts.

Section 2: DESIGNATION OF ACCESS PROVIDER

Subject to the terms and conditions herein, the Contracting Authority hereby designates Amherst Community Television, Inc. as the Designated Access Provider under the terms of the Renewal License, extending Amherst Community Television, Inc.'s already existing role as Designated Access Provider, subject to the terms hereof.

Section 3: DURATION

This Agreement shall be effective as of the Effective Date. It shall terminate upon the expiration of the Renewal License, unless earlier terminated pursuant to the terms of Section 4 herein.

Section 4: TERMINATION

4.1 This Agreement shall terminate upon the adjudication of the bankruptcy of ACTV unless termination is inconsistent with the orders of any bankruptcy court.

1 4.2 Subject to the provisions of this Section 4.2, this Agreement may be terminated by the
2 Contracting Authority prior to the end of the term set forth in Section 3 for the following
3 reasons:

- 4 (1) ACTV has materially failed to fulfill its responsibilities as set forth in this Agreement; or
5 (2) ACTV has materially failed to cooperate with the Contracting Authority in carrying out the
6 Purposes of this Agreement; or
7 (3) ACTV engages in malfeasance or misfeasance which hinders or otherwise interferes with its
8 obligations under this Agreement; or
9 (4) ACTV engages in the misappropriation or misuse of funds which hinders or otherwise
10 interferes with its obligations under this Agreement; or
11 (5) ACTV loses its federal 501(c)(3) status; or
12 (6) ACTV fails to maintain its status as a corporation in good standing with the Commonwealth
13 of Massachusetts or the U.S. Internal Revenue Service.

14 (a) Before any such termination, ACTV shall be given ninety (90) days advance written notice,
15 which notice shall set forth the reasons for the proposed termination and shall advise
16 ACTV that it will be provided an opportunity to cure any breach and be heard by the
17 Contracting Authority before any such action is taken. Said notice shall state the date, time,
18 and place of such hearing. In no event shall such hearing be held less than sixty (60) days
19 following delivery of such notice to ACTV.

20 (b) At said hearing, ACTV will be provided an opportunity to respond to the reasons for
21 the proposed termination and to discuss them with the Contracting Authority, including
22 discussion of whether ACTV has cured any alleged breach, and reasonable cure shall result
23 in withdrawing of the termination action. ACTV shall be entitled to reply in writing to said
24 reasons, a copy of which response shall be delivered to the Contracting Authority no later
25 than thirty (30) days following said hearing. The Contracting Authority shall make no
26 decision concerning termination until it has considered said response.

27 (c) If, after complying with the provisions of subsections (a) and (b) of this Section 4.2, the
28 Contracting Authority decides to terminate this Agreement, ACTV shall have ten (10) days to
29 submit a written appeal to the Issuing Authority, during which time this Agreement will remain

1 in effect. If ACTV files an appeal, this Agreement will remain in effect until the Issuing Authority
2 renders a decision on whether this Agreement should be terminated. The Issuing Authority shall
3 review the Contracting Authority's determination that ACTV has materially failed to fulfill its
4 responsibilities, and shall consider all evidence provided pursuant to subsections (a) and (b) of
5 this Section 4.2. The Issuing Authority may request any documents or conduct hearings as it
6 deems necessary and appropriate to render its decision.

7 4.3 ACTV may terminate this Agreement prior to the end of the term set forth in Section 3 by
8 a majority vote of its Board of Directors at a regular meeting where this item shall appear on the
9 agenda, or as specified by the By-Laws of the Corporation, for good cause shown and for the
10 following reasons:

11 (1) The Contracting Authority has materially failed to fulfill its responsibilities as set forth in this
12 Agreement; or

13 (2) ACTV ceases to operate or files any petition in bankruptcy, receivership or insolvency
14 proceedings, enters into an assignment for the benefit of creditors or consenting to, or
15 suffering to exist the appointment of, or the taking of possession by, a receiver, custodian,
16 trustee or liquidator of all or substantially all of its assets.

17 (a) Before any such termination, ACTV shall provide the Contracting Authority with at least
18 ninety (90) days advance written notice of its intention to terminate this Agreement. Said notice
19 shall, clearly and in detail, set forth good cause the reasons for the proposed termination, and
20 shall advise the Contracting Authority that it shall be provided an opportunity to be heard by the
21 ACTV Board of Directors regarding such proposed termination before any action is taken. Said
22 notice shall state the date time, and place at which said hearing shall occur. In no event shall
23 said hearing be held less than sixty (60) days following receipt of such notice to the Contracting
24 Authority.

25 (b) At said hearing, the Contracting Authority shall be provided an opportunity to respond
26 to the reasons for the proposed termination and an opportunity to discuss them with
27 the Board of Directors including discussion of whether the Contracting Authority has cured
28 any alleged breach, and reasonable cure shall result in withdrawing of the termination
29 action. The Contracting Authority shall be entitled to reply in writing to said causes and

1 reasons for termination, a copy of which shall be delivered to the Board of Directors no later
2 than thirty (30) days following said hearing. The Board of Directors shall make no decision
3 concerning termination until it has considered said response.

4 4.4. Under the terms of the Renewal License, all equipment purchased by the Town or its
5 designee(s) under the terms of the Renewal License shall be the property of the Town. Upon
6 termination of this Agreement, equipment so purchased may not be used to satisfy any
7 present or future indebtedness of ACTV and is subject to continuing access by the Town,
8 including the right of removal.

9 4.5 Within fifteen (15) business days following termination of this Agreement, ACTV shall deliver
10 to the Town of Amherst custody of all equipment and other property acquired by ACTV using
11 funds provided by the Licensee, the Town of Amherst, the Contracting Authority or from any
12 grants procured through the Town of Amherst pursuant to any cable television license ("Outside
13 Funds"), along with an accounting of such equipment and other property. ACTV will promptly
14 transfer to the Town of Amherst all Outside Funds held by ACTV, and will cooperate fully with
15 the Town of Amherst to ensure timely payment of ACTV debts and obligations and an orderly
16 transition to a successor PEG provider. The obligations of this provision shall survive termination
17 of this Agreement. ACTV's failure to comply with the terms of this provision shall constitute a
18 material breach of this Agreement. For the avoidance of doubt, this provision does not apply to
19 equipment and other property acquired by ACTV using its own funds (from fundraising, grants
20 independent from the Town of Amherst and any other source other than Licensee, the Town of
21 Amherst, the Contracting Authority or grants procured through the Town of Amherst).

22 23 Section 5: OBLIGATIONS OF ACTV

24 5.1. ACTV will maintain its status as a 501(c)(3) non-profit educational corporation eligible
25 for exemption from taxes under Federal and state law and the parties acknowledge that
26 ACTV actions hereunder shall therefore be subject to Section 501(c)(3) of the Internal
27 Revenue Code and shall be carried out in a manner consistent with the requirements
28 pertaining to same.

29 5.2. ACTV will maintain a governance structure which recognizes its obligations to the

Town, the Schools and the community and which maintains a balance among its public, educational and governmental access responsibilities consistent with its charitable purposes.

5.3. The purpose of public access is for the general charitable purpose of allowing members of the community to communicate their activities, opinions and ideas without interference or censorship through the creation of cable television programming and other means, with emphasis on providing training and education to the public pertaining to same, subject to the following. With respect to the Public Access Channel(s), ACTV will:

(a) be responsible for allowing volunteers and members of the general public to produce programming free from censorship of program content, except that with respect to very limited circumstances involving programming, if any, found to be unlawful, the parties acknowledge that ACTV may exercise station management editorial and/or scheduling rights as may be lawful and appropriate to limit or restrict any such unlawful programming consistent with customary practices of public access centers in accordance with applicable law and lawful operating rules or guidelines of ACTV;

(b) develop and promote programming including but not limited to cultural, literary, educational and public affairs programming on the Public Access Channel;

(c) make the public access facilities and channels available in a non-discriminatory manner to encourage the exchange of ideas and opinions on a broad range of topics and adopt and implement reasonable program scheduling policies;

(d) be responsible for raising funds to supplement Public Access operations; and

(e) engage in outreach activities designed to inform Town residents and organizations about the availability and use of PEG access channels and to encourage their use.

ACTV's ability to fulfill these requirements will be material criteria relevant to a determination of extension of this Agreement.

(f) Government Access Channel shall broadcast live the following meetings:

(1) Amherst Select Board – ALL

(2) Amherst Planning Board – ALL

(3) Amherst School Committee – ALL

(4) Amherst Regional School Committee – ALL

1 (5) Amherst Annual Town Meetings – ALL

2 (6) Amherst Special Town Meetings – ALL

3 Section 5.4: With respect to its operating budget, in consideration of ACTV's undertakings and
4 needs hereunder, the Contracting Authority agrees that ACTV shall receive all of the cable-
5 related funding paid to the Town by the Licensee pursuant to Section 7.2 of the Renewal License
6 within fifteen (15) business days of receipt. Unless prohibited by statute or mandatory state
7 regulations, the Town will maintain a PEG Agency Fund into which said cable-related funds shall
8 be deposited. If no longer permitted to use an Agency Fund for PEG monies, the Town agrees
9 that it will continue to pay over to ACTV all of the cable-related funding paid to the Town by the
10 Licensee pursuant to Section 7.2 of the Renewal License without deductions or set-offs.

11 (a) The budget shall include coverage of Town, Amherst School Committee, Regional School
12 Committee and Planning Board meetings as required by the Contracting Authority and the
13 Schools, but minimally including Annual and Special Town Meeting(s), meetings of the Select
14 Board, and meetings of the School Committee, with the foregoing being subject to said
15 meetings taking place in meeting rooms equipped with meeting room cameras, audio and
16 associated equipment as needed for municipal meeting coverage.

17 (b) Other municipal meetings will be recorded for future cablecast at the request of committee
18 Chairpersons through the Contracting Authority who will be required to give fifteen days lead
19 time in writing, via e-mail or other mutually-agreed upon method, to ACTV, except in
20 extraordinary or emergency circumstances, with such cablecasting requests subject to this
21 Agreement.

22 (c) The Contracting Authority may also schedule ACTV to cablecast other Town events and
23 the Superintendent of Schools may schedule ACTV to cablecast performances by School
24 groups, with such cablecasting requests subject to this Agreement. In each case, ACTV
25 may require three weeks lead time for an event to be cablecast.

26 (d) ACTV will maintain an archival policy to retain all recordings made pursuant to this
27 Agreement (the "Recordings") for at least one (1) year in a mutually acceptable format such as
28 H.264. The Recordings will be stored in a location reasonably designated by the Town. The
29 Recordings will be accessible to the general public within five (5) business days (subject to ACTV's

1 technical capability). ACTV will cooperate with the Town of Amherst and use its best efforts to
2 meet the deadlines of any public records request made for the Recordings. ACTV will make the
3 Recordings available to the Town's IT department or its designee for archival storage as
4 historical public records.

5 (e) Requests for increases in coverage pursuant to 5.4(b) and (c) above which involve
6 cablecasting meetings of a municipal department which were not cablecast as of the Effective
7 Date, hereof shall be subject to the availability of funds, staff and equipment to implement such
8 cablecasting. If such request for increases in cablecasting is reasonably deemed by ACTV's
9 Executive Director (and subject to review by the Board of Directors if requested by the
10 Contracting Authority) to be not feasible due to inadequate availability of funds, staff and
11 equipment, ACTV and the Contracting Authority, or the Contracting Authority's appointed agent
12 or representative, shall meet for good faith negotiations to determine reasonable and mutually
13 agreeable plans for such increase in municipal cablecasting. In the event requests for additional
14 cablecasting involve cablecasting of multiple meetings or events occurring at the same time, the
15 parties acknowledge ACTV may not be able to provide resources for cablecasting such
16 simultaneous meetings and/or events and the parties shall undertake good faith negotiations
17 to determine reasonable and mutually agreeable plans for addressing the needs of all parties
18 with respect to such simultaneous events and cablecast scheduling issues. Any meeting or event
19 cablecasting shall be subject to the requested meeting or event being at a location with
20 equipment available and conditions suitable for the requested cablecasting.

21 (f) Further to municipal and school meeting and event cablecasting, with respect to any
22 copyright, other intellectual property right, coverage and cablecasting consent and/or
23 talent or participant release forms, the municipal department or municipal officer or
24 School Department, as applicable, shall be responsible for obtaining any necessary
25 copyright, intellectual property and other consents and/or releases, if any are required.

26 (g) Further to increased School Department meeting cablecasting (that is, cablecasting in
27 addition to School Committee meeting coverage) and event cablecasting, it shall be the
28 responsibility of the School Department to find student interns and student volunteers to
29 operate the cameras for such additional meeting and event cablecasting, however, ACTV

1 shall provide School Department interns and volunteers free training as needed to prepare
2 for such camera and coverage operations, and, subject to reasonable notice and
3 availability, ACTV shall exercise reasonable efforts to provide other technical assistance
4 as may be needed and requested. This assistance will be limited to training or event
5 coverage and not include curriculum.

6 5.5. ACTV will manage and operate the PEG Access channels, equipment and facilities
7 on a non-discriminatory, basis. In managing and operating the channels, ACTV will carry out
8 such activities as:

- 9 (a) holding workshops for teaching television skills to individuals and community groups;
- 10 (b) managing funds designated for PEG access television;
- 11 (c) scheduling access programming and posting PEG cablecasting information on the
12 ACTV web site and to the extent possible in the Amherst Bulletin and other places;
- 13 (d) managing and maintaining PEG facilities and equipment;
- 14 (e) being responsible for ensuring an acceptable level of technical production quality
15 (not Cable System transmission signal quality) of all programs cablecast on its system,
16 pursuant to FCC regulations subject to the quality of the equipment used. ACTV is not obligated
17 to cablecast any PEG Access program that does not meet the FCC technical standards. However,
18 with respect to Public Access programming, a decision not to cablecast a program due to
19 technical problems shall not involve consideration of the actual content of the program itself.
20 ACTV shall not be held responsible for technical problems under control of the Cable System or
21 the Communications Network.

22 5.6. ACTV shall promulgate regulations and/or operating guidelines governing PEG
23 access including but not limited to levels of service, use of equipment and facilities,
24 training programs, membership, outreach activities, cablecasting procedures, scheduling
25 and operating policies and procedures.

26 5.7. ACTV may charge reasonable fees for Public Access services of ACTV or its
27 employees or agents or the use of ACTV facilities as necessary. Such fees shall not be
28 used to interfere with or censor a user who seeks to produce public access programming.
29 Use of equipment, facilities, and access to training shall not be denied based on

1 inability to pay such fees, however, equipment use may be conditioned on training or
2 certification of proficiency.

3 5.8. ACTV shall maintain a log of programming that is cablecast on the PEG Channels, and
4 a record of PEG producers. Logs shall be available for public inspection and retained by
5 ACTV for a minimum of three (3) years.

6 5.9. ACTV will also provide the Issuing Authority (i) unaudited balance, income and P & L
7 statements within sixty (60) days following the end of ACTV's fiscal year and (ii)
8 audited financial statements within thirty (30) days of receipt from its accountants, which
9 the Issuing Authority may use for advisory purposes and consultation with ACTV. ACTV may
10 request an extension of time for good cause. Within sixty (60) days following the end of its
11 fiscal year, ACTV will also provide the Issuing Authority with an operating report which shall
12 reflect any available input received from community members and organizations and which will
13 serve as a means of evaluating the performance of ACTV and identifying new goals and
14 directions. This report will be one of the criteria relevant to extension of this Agreement, as
15 reasonably determined by the Issuing Authority, and shall contain at least the
16 following items:

- 17 (a) a summary of the activities in the development of the PEG access program;
- 18 (b) a schedule of rates and charges for PEG Access related activities;
- 19 (c) the most recent budget report as provided to ACTV Board;
- 20 (d) changes in staff roster or staff job descriptions from prior reports;
- 21 (e) outreach presentations, mailings, surveys and results;
- 22 (f) fundraising;
- 23 (g) training;
- 24 (h) facility and equipment use;
- 25 (i) duplicated and unduplicated PEG access programming by channel;
- 26 (j) PEG programming developed by ACTV staff; and
- 27 (k) profiles of board members, including specific PEG interest areas; and
- 28 (l) list of programs and productions created by ACTV staff or volunteers since the time of the last
29 report.

1 5.10. Unless otherwise relieved of the responsibility by the Issuing Authority, ACTV will
2 make annual financial reports to the Issuing Authority, for advisory purposes and
3 consultation.

4 5.11. The President and Executive Director of ACTV shall make themselves available from
5 time to time to advise the Issuing Authority on matters concerning PEG Access.

6 5.12. ACTV will keep a current data base of access programs in its library and make them
7 available during normal business hours.

8 5.13. ACTV shall keep an inventory of equipment purchased under the terms of this and
9 prior agreements and make such inventory available for inspection by the Contracting
10 Authority upon reasonable request. No equipment purchased or otherwise acquired under this
11 or previous agreements shall be sold or otherwise transferred without 28-day prior notice to
12 the Contracting Authority. If after 28 days the Contracting Authority has not approved or
13 disapproved the proposed equipment sale or transfer, such sale or transfer shall be
14 deemed approved. Notwithstanding anything in this Section 5.13 to the contrary, all purchasing
15 and disposition of equipment must comply with the Uniform Procurement Act codified in M.G.L.
16 c. 30B as amended from time to time.

17 5.14. ACTV will indemnify and hold harmless the Town and its elected officials,
18 appointed boards and commissions, employees and agents from and against losses,
19 damages, liabilities, claims, demands, judgments, settlements, costs, and expenses
20 including penalties, interest and reasonable attorneys' fees and disbursements resulting
21 from or arising out of a) breach by ACTV of its obligations under this Agreement; b)
22 personal injury or property damage occurring after the effective date of this Agreement
23 arising out of ACTV's use of the facilities or equipment owned or leased by ACTV
24 (other than personal injury or property damage resulting from the negligence or willful
25 misconduct of the Town or its elected officials, members of appointed boards and
26 commissions, employees or agents); or c) personnel grievances concerning the hiring,
27 firing and conditions of employment of ACTV employees. Except where ACTV is
28 determined to be primarily at fault under Massachusetts statutory and case law, or under
29 common law principles, ACTV's obligation under this section shall not apply to claims, demands,

actions or suits arising from the Town's government or educational access cablecasting activities and shall not apply to claims, demands, actions or suits arising from cablecasting of individual producers or equipment users, and such producers/users shall separately indemnify the Town and ACTV as set forth in Section 5.15 below. In the event that ACT fails to secure the required indemnity agreement from any individual producer or equipment user, ACTV shall hold the Town of Amherst harmless from all damages, claims, suits and costs (including legal fees) arising from the acts of such individual producer or equipment user.

5.15. ACTV shall require access users to indemnify in writing the Town and ACTV and hold both harmless against any claims arising out of any program or program material produced and/or cablecast, including but not limited to, claims in the nature of libel, slander, invasion of privacy of publicity rights, non-compliance with applicable laws, license fees and the unauthorized use of copyrighted material or in connection with other claims proximately caused by the acts of such access users. Any claim of any nature arising from the acts of individual producers/users and members of the public shall be the responsibility of said individual producers/users and members of the public, are not the responsibility of the Town or ACTV. ACTV shall maintain all original indemnity agreements signed by producers or equipment users for no less than four (4) years and, if reasonably needed by the Town with respect to a complaint, claim or threatened claim, ACTV will provide such indemnity agreement to the Contracting Authority within five (5) days of a request.

5.16. ACTV shall provide an electronic bulletin board on the public access channel(s) for the purpose of announcing programming and access services, making public service announcements, and allowing the Town, Schools or other non-profit organizations to make certain announcements. The community calendar(s) shall be updated regularly and appropriately to serve cable subscribers in the best fashion. The electronic bulletin board will be transmitted when regular programming is not scheduled.

5.17. ACTV shall, unless otherwise directed in writing by the Town, obtain and maintain in full force and effect at all times during the term of this Agreement all insurance required below by this Section.

(a) Commercial General Liability Insurance - Commercial General Liability Insurance

1 policy, including protective liability, completed operations and broad form contractual
2 liability, property damage and personal injury coverage, with a minimum coverage limit of One
3 Million Dollars (\$1,000,000) per person and per occurrence, Two Million Dollars (\$2,000,000)
4 aggregate.

5 (b) Motor Vehicle Liability Insurance - Automobile liability insurance for owned, leased, rented
6 motor vehicles in the amount of Five Hundred Thousand Dollars combined single limit
7 (applicable if ACTV purchases or leases motor vehicle).

8 (c) Excess/Umbrella Liability Insurance - In the minimum amount of Two Million Dollars
9 (\$2,000,000) over the insurance required by Subparagraphs (a) and (b) above.

10 (d) Business Personal Property Insurance - Business personal property insurance for facilities and
11 equipment in the amount of replacement cost.

12 (e) Workers' Compensation – Workers' Compensation in the amount of the statutory requirements.

13 (f) Broadcaster's Errors and Omission Insurance - Errors and omission insurance to cover the
14 content of productions which are cablecast on an Access Channel to include, at a minimum, the
15 following areas: libel and slander; copyright or trademark infringement; infliction of emotional
16 distress; invasion of privacy; plagiarism; misuse of musical or literary materials. This policy shall
17 not be required to cover individual access producers. The minimum amount of said insurance
18 shall be One Million Dollars (\$1,000,000).

19 (g) Directors' and Officers' Liability insurance - Directors' and Officers' Liability insurance
20 for its directors and officers in a minimum amount determined by ACTV, unless such increased
21 insurance coverage is commercially unavailable or, in the reasonable determination of the
22 Contracting Authority, commercially impracticable to ACTV.

23 (h) The following conditions shall apply to the insurance policies referenced above:

24 (i) The Town shall be named as an additional insured on all aforementioned insurance
25 coverages to the extent allowed by law, other than the worker's compensation policy.

26 (ii) The policies shall provide that no cancellation, material change in coverage or expiration
27 may be effected by the insurance company without first giving the Town thirty (30) days
28 written notice prior to the effective date of such cancellation or change in coverage;

29 (iii) Such insurance shall be obtained from producers authorized to transact insurance business

1 in the Commonwealth of Massachusetts and, unless otherwise agreed to in writing by the
2 Town, shall be provided by an insurance carrier(s) licensed to do business for the coverage
3 provided in the Commonwealth of Massachusetts by the Massachusetts Division of Insurance;

4 (iv) The coverage amounts set forth above may be met by a combination of underlying and
5 umbrella policies so long as in combination the limits equal or exceed those required
6 herein and follow the same form;

7 (v) The cost of such insurance, including all premiums and deductibles, shall be borne by ACTV;

8 (vi) The parties to this Agreement shall periodically review the insurance coverage and coverage
9 amounts required above to determine whether said insurance adequately protects the
10 parties and is cost effective;

11 (vii) The failure of ACTV to maintain the insurance required herein shall be grounds for the Town
12 to exercise any or all remedies for material breach as set forth in Section 4.2.

13 (viii) If the Town's own minimum coverage amounts for any of the insurance referenced above
14 increases (regardless of the Town's current coverage amounts), the Contracting Authority
15 may require ACTV to increase its corresponding insurance coverage within twelve (12)
16 months written notification by the Contracting Authority to ACTV, unless such increased
17 insurance coverage is commercially unavailable or, in the reasonable determination of the
18 Contracting Authority, commercially impracticable, to ACTV. Any insurance requirement
19 under Section 5.17 (a) - (h), shall be subject to commercial availability of the required
20 insurance product.

21 5.18. ACTV will be responsible for locating and arranging for use of its facilities, including
22 payment of rent, for the PEG access purposes under this contract, except that ACTV shall not
23 have to pay for or maintain any Town or school facilities used for PEG access purposes.

24 5.19. ACTV will maintain accounting and budget systems for the facility and community
25 access services that comply with generally accepted accounting practices. Said accounting
26 and budget systems shall be subject to annual review by the Contracting Authority, if
27 requested by the Contracting Authority, however, such review, if any, shall be advisory in
28 nature. The foregoing refers to Contracting Authority review of ACTV budget "systems" and
29 does not require approval of ACTV's budget.

1 5.20. ACTV will provide Public Access services to those who live, work or attend school
2 in Amherst on a non-discriminatory basis using ACTV facility, equipment, staff and other
3 resources as ACTV deems necessary and appropriate to fulfill community access
4 management needs. ACTV's ability to provide these services will be one of the criteria
5 for consideration of extension of this Agreement.

6 5.21. ACTV will establish a fund-raising program with a goal of supplementing the
7 annual operating support payments received under the terms of the Renewal License.
8 Equipment purchased with the supplemental funds raised by ACTV pursuant to this
9 section shall be the property of ACTV unless otherwise agreed by the parties.

10 5.22. ACTV, consistent with Section 6.3 of Renewal License, shall submit to the Contracting
11 Authority a capital improvement plan that shall include items to be purchased, the cost of said
12 items and the schedule of proposed purchase. The capital improvement plan shall be reviewed
13 by the Contracting Authority, and barring written comment, shall be approved. If Contracting
14 Authority does not comment in writing to ACTV within thirty (30) days of submittal by ACTV of
15 the capital improvement plan, then the capital improvement plan will be deemed to be
16 approved. Approval of the capital improvement plan shall not be unreasonably withheld.

17 In the event of Contracting Authority written comment within the aforesaid thirty (30) day
18 period resulting in absence or delay of approval, ACTV shall have an opportunity to resubmit its
19 capital improvement plan to address said comments, whereupon Contracting Authority shall
20 reasonably determine if ACTV's plan as modified addresses said comments. If Contracting
21 Authority does not comment in writing to ACTV within thirty (30) days of re-submittal by ACTV of
22 the capital improvement plan, then the capital improvement plan will be deemed to be
23 approved. Approval of the capital improvement plan as resubmitted shall not be unreasonably
24 withheld. All items purchased for capital expenditures will be acquired utilizing the Town of
25 Amherst purchasing procedure, except that the Contracting Authority reserves the right to
26 designate ACTV as recipient of funds for ACTV direct purchases subject to and in accordance with
27 applicable law, and pursuant to a Contracting Authority-approved capital improvement plan. All
28 items purchased shall be recorded as owned by the Town of Amherst and shall be so marked.
29 Disposal of all items must be approved by the Town of Amherst Contracting Authority.

1 The parties acknowledge that ACTV's capital improvement plan may include proposed
2 capital facility improvements in addition to proposed equipment item purchases as facility
3 improvements as well as equipment purchases are within the scope of PEG Access capital
4 expenditures authorized by the Renewal License. In consideration of ACTV's undertakings
5 pursuant to the Agreement, notwithstanding a rejection or disapproval of a particular
6 capital improvement plan, it is agreed that the capital made available to the Town under
7 Section 6.3 of the Renewal License be expended only on PEG Access matters through
8 ACTV and through the framework herein in compliance with the Renewal License, the policies
9 of the DTC, ACTV's by-laws and applicable state and federal law.

10
11 Section 6: OBLIGATIONS OF THE CONTRACTING AUTHORITY

12 6.1. The Contracting Authority shall insure that the terms and financial arrangements
13 regarding PEG access in the Renewal License are executed and implemented in a timely
14 manner.

15 (a) With respect to capital support, the Contracting Authority agrees that ACTV shall receive a
16 portion of the PEG Access/Cable-Related Equipment/Facilities Funding paid to the Town by the
17 Licensee pursuant to Section 6.3 of the Renewal License in accordance with Section 5.22 of this
18 Agreement. The amount and timing of the payments to ACTV are set forth in Schedule 1 of this
19 Agreement.

20 (b) It is the intent of the Contracting Authority to retain the License Fee Payments of
21 \$0.50/subscriber paid to the Town by the Licensee pursuant to Section 7.1 of the Renewal
22 License for use by the Contracting Authority or its designees in enforcing the provisions of the
23 Renewal License.

24 (c) Following the construction of the Communication Network, the Contracting Authority shall
25 provide a wired Ethernet interface, or a mutually agreed upon replacement technology, to each
26 location regularly used to live broadcast the meetings listed in Section 5.3(f). Following the
27 construction of the Communication Network, the Contracting Authority will also provide a wired
28 Ethernet interface, or a mutually agreed upon replacement technology, at ACTV's studio at
29 246 College Street or Main Street or other location mutually agreed upon in Amherst and in

1 Amherst Town Hall for the purpose of connecting to the Cable System. ACTV shall install and
2 maintain the video equipment that connects to the Ethernet interface, or a mutually agreed upon
3 replacement technology.

4 6.2. The Contracting Authority shall be responsible for advising ACTV on policies, guidelines and
5 programming the Governmental Access Channel(s), however the parties acknowledge that
6 in the event the foregoing impacts ACTV's budget, the foregoing shall be subject to
7 customary Board of Directors independent review and determination consistent with the
8 private non-profit status of ACTV, however ACTV's Board of Directors will, at all times,
9 undertake good faith efforts to cooperate and consult with the Contracting Authority regarding
10 Government Access.

11 6.3. The Issuing Authority shall nominate an individual to serve on the Board of Directors
12 of ACTV. The responsibility of said Issuing Authority nominee is to represent the interests of
13 the Town on ACTV's Board of Directors subject to and in accordance with said Director's
14 responsibility to also represent the best interests of ACTV.

15 6.4. The Town is a governmental entity that is subject to the Public Records laws of the
16 Commonwealth. The Town will comply with that law and will honor all public records
17 requests submitted to it relating to all aspects of this Agreement.

18 6.5. The Contracting Authority retains the right to audit ACTV's financial affairs at the
19 Town's expense. ACTV shall cooperate in the preparation of such audit.

20 6.6. The Town shall not consider the content of public access programming, including the
21 producer's choice of subject matter and the point of view expressed, in making any
22 decision regarding the allocation or appropriation of funds for ACTV, or the termination
23 of this Agreement.

24 6.7. The Town shall, at its sole cost and expense, but only to the extent lawful for local
25 governments, indemnify and hold harmless ACTV against any claims arising out of the
26 Town's breach of this Agreement or otherwise proximately caused by the Town, providing
27 that the Town is given timely notice of such claim. Indemnified expenses shall include but not be
28 limited to all out-of-pocket expenses such as attorney's fees.

29 6.8. The Contracting Authority will consult with ACTV before making any purchases of

1 capital equipment to be used for PEG access.

2 6.9. ACTV may at any time file a written complaint with the Contracting Authority
3 concerning operations of the Cable System that have a bearing on ACTV's performance
4 under this Contract and further providing that the subject matter of such complaint is within
5 the powers of the Contracting Authority to review, and cure. The Contracting Authority shall
6 investigate said complaints pursuant to the matter as spelled out in the Renewal License
7 and/or other rules or regulations established by the Town and will review and take action as
8 deemed appropriate.

9 10 Section 7: PERFORMANCE EVALUATION HEARINGS

11 Every year, if requested by the Contracting Authority, ACTV shall take part in a Performance
12 Evaluation Hearing. These hearings shall be mandatory if requested and scheduled by the
13 Contracting Authority. ACTV will be provided thirty (30) days notice of hearings. The purpose of
14 such hearings shall be to assist in determining whether ACTV is performing its responsibilities
15 under this Agreement including, without limitation, public access programming, managing the
16 payments for PEG access, training residents, scheduling the PEG channels, good faith efforts for
17 raising funds, and other requirements identified in this Agreement, all with a view to ensuring
18 necessary steps be taken to ensure appropriate remediation and improvements. In the event a
19 Performance Evaluation Hearing is not held for any period of time as specified hereunder, for
20 said period, ACTV shall not be deemed in noncompliance with its obligations hereunder, and any
21 subsequent Performance Evaluation Hearing shall be with respect to a compliance period going
22 back not more than two years prior to the holding of such hearing. The parties may use a
23 different evaluation procedure if mutually agreed-upon.

24 25 Section 8: SEVERABILITY

26 If any section, sentence, paragraph, term or provision of this Agreement is determined to be
27 illegal, invalid or unconstitutional by any court of competent jurisdiction in the
28 Commonwealth of Massachusetts or by any state or federal regulatory agency having
29 jurisdiction thereof, such determination shall have no effect on the validity of any other

1 section, sentence, paragraph, term or provision, hereof.

2
3 Section 9: MISCELLANEOUS

4 9.1. At all times during the Agreement term, should the parties hereto agree that
5 equipment necessary for operation of the I-Net or Communications Network is to be
6 located within the facilities of ACTV, the Town shall have the right to establish and
7 enforce, and ACTV will comply with and implement, reasonable rules and procedures that the
8 Town deems appropriate and necessary for ACTV's use of the Town's I-Net or Communications
9 Network with respect to purposes of data security, including physically locking, and regulating
10 access to, whatever space may house the equipment holding or transmitting such data. The
11 Town will be given physical access to such space(s) during the Agreement term. ACTV will be
12 provided with 24/7 access to any spaces under the control of the Town in which equipment
13 necessary for cablecasting is located. The Town shall provide ACTV with contact information of
14 on-call Town personnel to request access outside of ordinary business hours.

15 9.2. This Agreement is the entire Agreement of the parties and supersedes all prior
16 negotiations, Agreements, or contracts whether written or oral.

17 9.3. ACTV shall not assign or transfer any interest in this Agreement without prior written
18 consent of the Town, provided, however, that nothing herein shall prevent ACTV from
19 subcontracting the performance of any provision or obligation required by this Contract, as long
20 as ACTV remains primarily responsible to the Town for the performance of such provision or
21 obligation.

22 9.4. This Agreement may be amended upon the mutual Agreement of the Town and ACTV.
23 Amendments shall be in writing and effective upon execution by duly qualified officers of the
24 Town and ACTV.

25 9.5. This Agreement shall be interpreted in accordance with the laws of the Commonwealth of
26 Massachusetts. The parties hereto subject themselves to the jurisdiction of the courts of the
27 Commonwealth of Massachusetts, county of Hampshire, for the resolution of any dispute, action
28 or suit arising in connection with this Agreement, however, the parties shall endeavor to
29 informally negotiate or mediate such disputes prior to any recourse to said courts.

1 9.6 In the event federal law is changed to direct Licensee (or its successor(s)) annual payments
2 in a manner different from that specified in the Renewal License, the Town shall, to the extent
3 permitted by applicable law, take such steps as reasonably needed to ensure that said payments
4 are available to ACTV consistent with the intent of this Agreement and the Renewal License.

5 9.7. Any notice required to be given or served upon any party in connection with this
6 Agreement shall be in writing and shall be deemed to have been given and received a)
7 three business days after the registered or certified letter containing the notice, properly
8 addressed, with the postage prepaid, is deposited in the United States Mail; or b) if made
9 in any other manner, upon the actual delivery to and receipt by the party to whom it is
10 addressed. Notice shall be given to the parties at the following addresses or such other address
11 as one party may specify in writing to the other:

12 For the Town:

13 Town Manager

14 Town Hall

15 4 Boltwood Avenue

16 Amherst, MA 01002

For ACTV:

Executive Director

Amherst Media

246 College Street


Amherst, MA 01002

17 10.8 If during the term of this Agreement the Town of Amherst adopts a change in its Charter
18 that defines a new governance structure (e.g. Town Council), the parties agree to negotiate in
19 good faith to modify the provisions of Section 1(m), Section 5.3(f), Section 5.4, and other such
20 provisions of this Agreement as the parties mutually agree are effected by the adoption of a
21 revised Charter.

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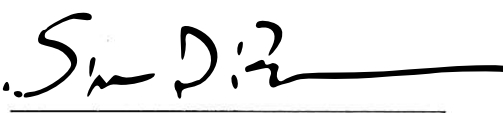
SIGNATURE PAGE

Town Manager
for the Select Board as Cable Television
License Issuing Authority



Town Manager

For Amherst Community Television, Inc.



President

Date: Oct. 20, 2017

SCHEDULE 1

to the

AGREEMENT BETWEEN THE

TOWN OF AMHERST

AND AMHERST COMMUNITY TELEVISION, INC.

Dated October 20, 2017

Section 6.1(a) PEG Access/Cable-Related Equipment/Facilities Funding

YEAR	ANNUAL PAYMENT BY LICENSEE	AMOUNT RETAINED BY THE TOWN	AMOUNT PAID TO ACTV
One (2017)	\$95,000.00	\$0	\$95,000.00
Two (2018)	\$95,000.00	\$0	\$95,000.00
Three (2019)	\$95,000.00	\$0	\$95,000.00
Four (2020)	\$120,000.00	\$0	\$120,000.00
Five (2021)	\$120,000.00	\$75,000.00	\$45,000.00
Six (2022)	\$120,000.00	\$75,000.00	\$45,000.00
Seven (2023)	\$120,000.00	\$75,000.00	\$45,000.00
Eight (2024)	\$120,000.00	\$75,000.00	\$45,000.00
Nine (2025)	\$120,000.00	\$75,000.00	\$45,000.00
Ten (2026)	\$120,000.00	\$75,000.00	\$45,000.00
Subtotal:	\$1,125,000.00	\$450,000.00	\$675,000.00

The total amount paid to ACTV pursuant to Section 6.1(a) of this Agreement shall be \$675,000. The Town agrees to request borrowing authorization for approximately \$410,000 in Spring 2018 in order to accelerate funds paid to ACTV. If the borrowing is authorized, ACTV will pay the principal amount of the bond from future disbursements due ACTV according to a revised schedule to be mutually agreed upon by the Town and ACTV.